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PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			COLE, ELIZABETH M	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

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GROUP 1700

Application Number: 10/025,214
Filing Date: December 18, 2001
Appellant(s): NIEMEYER ET AL.

Melanie Rauch
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/13/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

GB 1,231,648	Celanese Corporation	5-1971
5,262,218	Putzier	11-1993
WO 99/17695	Everett et al	4-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

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Claims 1, 3-6, 8, 10-11, 16, 19-21, 23, 24-25, 27, 29, 30 are rejected under 35 U.S.C. 103(a) as obvious over Putzier, U.S. Patent No. 5,262,218 in view of GB 1,231,648.

Putzier discloses an absorbent material comprising an absorbent core which may comprise pulp and superabsorbent particles, (col. 3, lines 46-58, col. 4, lines 20-44), a complete wrapper which encompasses the absorbent core which comprises a fibrous material such as a cotton-type material, (col. 4, line 65 – col. 5, line 10), and a binder material for stabilizing the wrapper, (col. 2 line 48). Figure 2 shows that the wrapper overlaps itself at the bottom portion of the absorbent article. Although Putzier does not disclose the amount of absorbency which is contributed to the absorbent material by the wrapper, it is reasonable to presume that the Putzier material would meet the limitations of the claims. Support for this presumption is found in the fact that Putzier employs the same materials and because plant-based fibers such as cotton are well known as being absorbent. In the alternative, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected the thicknesses and relative proportions of the components in order to arrive at a material having the desired absorbency through the process of routine experimentation. With regard to the limitation that the wrapper comprises a mixture of absorbent material and binder, since the wrapper comprises both elements it would inherently comprise a mixture of the two. It is noted that the binder is taught by Putzier as stabilizing the wrapper and the absorbent structure. Further, GB 1,231, 848 teaches that when stabilizing binders are added to fibers by means of spraying, dipping or coating the combination of binder and fibers forms a mixture. See page 2, lines 37-41. Therefore, as taught by GB '848,

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when binders are applied to a fibers to stabilize a fibrous structure, the binder forms a mixture with the fibers. With regard to the amount of binder employed, Putzier does not teach the particular amount of binder, however it would have been obvious to have selected the particular amounts of binder through the process of routine experimentation, in order to arrive at an amount of binder which provided sufficient strength and stability to the wrapper material without using excess binder which would be expensive, wasteful and could potentially have a negative effect on the hand, absorbency, etc of the wrapper material. Further, GB '648 teaches employing 10-60 weight percent binder in order to form a product which is sufficiently strong. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed from 10-60 weight percent binder motivated by the expectation that this would form a sufficiently strong product.

Claims 1-14, 16-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/17695 to Everett et al in view of GB 1,231,648. Everett et al discloses an absorbent material which comprises an absorbent core which may be zoned to have different levels of absorbency, and which may further comprise binders and superabsorbent materials. See page 20, lines 1-15, 26-33 and page 21. Everett et al teaches that the absorbent core may be encased in a wrapper which preferably comprises an absorbent material. See pages 23-25. Everett et al differs from the claimed invention because Everett et al does not specifically teach that the wrapper comprises a binder, and does not disclose the amount of absorbency which is contributed to the absorbent material by the wrapper. With regard to the binder, Everett

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et al teaches that absorbent tissue may be used as the wrapper material. GB '648 teaches that non-irritating binders may be applied to tissues which are incorporated into absorbent articles such as diapers in order to enhance the strength of the tissues. See col. 3, lines 22-42. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a binder as taught by GB '648 with the wrapper of Everett. One of ordinary skill in the art would have been motivated to employ a binder in order to enhance the strength of the tissue which is wrapped around the absorbent core of Everett et al. With regard to the limitation that the wrapper comprises a mixture of absorbent material and binder, since GB '648 teaches that combining the binder and the fibers forms a mixture, (page 2, lines 37-41), a mixture would be formed by applying a binder as taught by GB '648. With regard to the particular amount of binder used, it would have been obvious to have selected the particular amounts of binder through the process of routine experimentation, in order to arrive at an amount of binder which provided sufficient strength and stability to the wrapper material without using excess binder which would be expensive, wasteful and could potentially have a negative effect on the hand, absorbency, etc of the wrapper material. Further, GB '648 teaches employing from 10-60 weight percent binder in order to form a product which is sufficiently strong. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed from 10-60 weight percent binder motivated by the expectation that this would form a sufficiently strong product.

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Claims, 15, 45, 46-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everett in view of GB 1,231,648 as applied to claims 1-14, 16-33 above, and further in view of Rosch et al, U.S. Patent No. 6,009,558. Neither Everett nor GB '648 teach swimwear incorporating an absorbent material. Rosch teaches that swimwear may be formed so that it incorporates an absorbent core. IT would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated an absorbent core as taught by Everett into the swimwear of Rosch. One of ordinary skill in the art would have been motivated to employ the absorbent core of Everett because it is disclosed as having excellent liquid absorbing and holding properties.

(10) Response to Argument

Appellant argues that the binder which is applied to the wrapper in Putzier is only to secure the wrapper in place around the absorbing body to create an overall stabilized absorbent structure in contrast to in the claimed invention where the description of stabilization refers to the stability of the wrapper per se, thus creating a stabilized wrapper. However, Putzier clearly teaches that binder stabilizes the wrapper per se, (see col. 2, line 48 as well as claims 1 and 4 of Putzier). Claim 4 states that binder stabilizes the wrapper so that the absorbent material cannot escape. The binder does not stabilize the absorbent material, but provides strength and structure to the wrapper so that the wrapper is able to contain the absorbent material.

Appellant argues that in Putzier the binder material would be concentrated at the seam. However, there is nothing in the entire disclosure of Putzier to support the

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contention that the binder is only applied at the seam. Rather, as shown above, Putzier repeatedly states that the binder stabilizes the wrapper, not the seam where the wrapper is overlapped on itself. A binder which was only applied at the seam would not stabilize the entire wrapper which is clearly set forth in Putzier.

Appellant argues that only a very minor amount of binder is used because in Putzier the binder is only used to secure the wrapper around the absorbent body. This assertion is contrary to the disclosure of Putzier which clearly states that the binder is applied to the wrapper to stabilize the wrapper.

Appellant argues that there is no motivation to include binder throughout the wrapper of Putzier because Putzier employs an intermediate layer to hold the absorbent material in place, rather than the wrapper. However, Putzier teaches at col. 5, lines 11-23, that it is the wrapper which provides integrity to the absorbent article by holding the absorbent material in place before, during and after use. Therefore, the wrapper would have to have structural integrity, which is why Putzier teaches stabilizing the wrapper with a binder.

Appellant argues there is no motivation to balance the absorbent fibrous material and binder material in the wrapper of Putzier. However, the claims do not include any limitations regarding the fibrous material and the binder being balanced, but instead recite a mixture. Since the binder is applied to the wrapper to stabilize the wrapper, the binder would necessarily be found throughout the wrapper and would thus form a mixture.

Appellant argues that since Putzier states that the absorbent body accounts for 80-90% by weight of the absorbent material while the wrapper comprises 8% by weight of the absorbent structure, that the wrapper of Putzier would not contribute 20% of the total absorbent capacity. However, the relative weight percents of the components do not necessarily correspond to the total absorbent capacity. If 8% of a more absorbent material were used versus 80% of a non-absorbent or less absorbent material, the wrapper could still contribute at least 20% of the total absorbent capacity. It is noted that total absorbent capacity is defined in the instant specification at page 11 as "saturated capacity as measured according to the test method provided below." The test method is set forth at pages 21-22, but no examples are provided to show the relative basis weights of the wrapper compared to the absorbent core, or to show the relationship between the basis weight of the two components and the absorbency of the claimed absorbent material. The specification does not provide the basis weights for any of the components, nor does the specification teach the relative thicknesses of the wrapper and core layers. Looking at the figures in the instant application, the scale of the layers appears to be generally similar to those of Putzier. The specification teaches that the wrapper can comprise a nonwoven web, a coform or any other suitable material. The wrapper of Putzier is preferably a nonwoven material of organic polymer or plant origin, including cotton-type fibers. Thus the materials which make up the wrapper of Putzier are the same as those employed to make up the claimed wrapper. Therefore, it is the examiner's position that the material of Putzier would have the same properties.

Appellant argues that there is no motivation to optimize the absorbency of the wrapper of Putzier, contrary to what is taught by Putzier. However, Putzier does not teach a non-absorbent wrapper. The wrapper is formed from substantially the same materials as the instantly claimed wrapper. Cotton-type fibers would be absorbent. Therefore, it is the examiner's position that it is reasonable to presume the wrapper of Putzier would have the claimed absorbency, and it further would have been, if necessary, obvious to select the particular degree of absorbency of the wrapper in order to form a material having the desired degree of absorbency.

Appellant argues that the combination of GB '648 with Putzier would motivate one of ordinary skill in the art to eliminate the wrapper in Putzier in order to form a material like that disclosed in GB '648. However, GB '646 was cited to show suitable amounts of binder which can be applied to biodegradable fibers in order to stabilize them to form an absorbent article. Putzier clearly teaches that the purpose of the binder is to stabilize the fibrous material which makes up the wrapper. Therefore, the person of ordinary skill in the art would have been motivated by the teaching of GB '648 to apply a similar amount of binder to the wrapper of Putzier, in order to form a similarly stabilized wrapper.

With regard to the combination of Everett et al and GB '648, Appellant argues that wrapping sheet 28 of Everett is very thin. However, looking at the figures in the instant application, the wrapper of Everett does not seem to be of a different scale than the instant wrapper.

Appellant argues that the purpose of the wrap of Everett is to contain the superabsorbent material. However, Everett itself clearly states that the wrapper itself is to be made of an absorbent material. See page 23, lines 30-35. Everett employs materials which are the same as the materials employed in the instant application, including cellulosic webs.

Appellant argues that the wrapper of Everett does not disclose that it contains superabsorbent. However, the instant claims also do not recite the presence of superabsorbent in the wrapper.

Appellant argues there is nothing to support the contention that the wrapper of Everett would provide 20 percent of the total absorbent capacity of the absorbent article. However, as set forth with regard to Putzier, total absorbent capacity is defined in the instant specification at page 11 as "saturated capacity as measured according to the test method provided below." The test method is set forth at pages 21-22, but no examples are provided to show the relative basis weights of the wrapper compared to the absorbent core, or to show the relationship between the basis weight of the two components and the absorbency. The specification does not provide the basis weights for any of the components, nor does the specification teach the relative thicknesses of the wrapper and core layers. Looking at the figures in the instant application, the scale of the layers appears to be generally similar to those of Everett. The specification teaches that the wrapper can comprise a nonwoven web, a coform or any other suitable material. The wrapper of Everett is preferably a nonwoven material such as a cellulosic web. Thus the materials which make up the wrapper of Everett are the same as those

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employed to make up the claimed wrapper. The wrapper of Everett is specifically disclosed as being absorbent. Therefore, it is the examiner's position that the material of Everett would have the same properties or else it would have been obvious to optimize the absorbency of the wrapper through the process of routine experimentation in order to arrive at an absorbent wrapper and an absorbent article as a whole which had the desired absorbency.

Appellant argues that Everett provides no motivation to arrive at a wrapper having the claimed absorbency because Everett teaches that it is desirable to decrease the thickness of the absorbency article. However, it is noted that neither the claims nor the specification disclose a preferred thicknesses. Further, Everett teaches employing an absorbent wrapper so there would be a motivation to discover the optimum degree of absorbency which produced the best absorbent article.

With regard to GB '648, Appellant argues that one of ordinary skill in the art would not be motivated to apply a binder to Everett as taught by GB '648 because the GB '648 structure does not comprise a wrapper. However, GB '648 is relied on to show suitable amounts of binders which can be applied to absorbent articles such as absorbent tissues in order to impart good structural integrity to them. Therefore, one of ordinary skill in the art would have been motivated to apply the binder as taught by GB '648 because such binders are taught as being suitable for applying to cellulosic absorbent tissues.

Appellant argues there is no motivation to apply the binder of GB '648 to the Everett wrapper because it is intended for use on biodegradable fibers. However, the

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particular binder employed is also disclosed in GB '648 as being non-irritating and suitable for use in skin-contacting applications.

Appellant argues that one of ordinary skill in the art looking at the combination of Everett and GB '648 would have been motivated to do away with the wrapper of Everett and just apply the binder of GB '648 to the absorbent layers in Everett. However, the wrapper of Everett is disclosed as imparting absorbency to the overall absorbent article and therefore it would not have been obvious to remove the wrapper from the Everett structure because a loss of absorbency would occur.

With regard to the combination of Everett in view of GB '648 and further in view of Rosch et al, Appellant argues that since Everett in view of GB '648 do not render the claimed invention obvious, the addition of Rosch cannot do so. The arguments regarding Everett and GB '648 are addressed above.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Elizabeth M. Cole

Conferees:

Terrel Morris — 

Carol Chaney 